

### § 3.208

### 38 CFR Ch. I (7–1–07 Edition)

#### § 3.208 Claims based on attained age.

In claims for pension where the age of the veteran or surviving spouse is material, the statements of age will be accepted where they are in agreement with other statements in the record as to age. However, where there is a variance in such records, the youngest age will be accepted subject to the submission of evidence as outlined in § 3.209.

CROSS REFERENCE: Evidence of dependents and age. See § 3.204.

[40 FR 53581, Nov. 19, 1975, as amended at 52 FR 19349, May 22, 1987]

#### § 3.209 Birth.

Age or relationship is established by one of the following types of evidence. If the evidence submitted for proof of age or relationship indicates a difference in the name of the person as shown by other records, the discrepancy is to be reconciled by an affidavit or certified statement identifying the person having the changed name as the person whose name appears in the evidence of age or relationship.

(a) A copy or abstract of the public record of birth. Such a record established more than 4 years after the birth will be accepted as proof of age or relationship if, it is not inconsistent with material of record with the Department of Veterans Affairs, or if it shows on its face that it is based upon evidence which would be acceptable under this section.

(b) A copy of the church record of baptism. Such a record of baptism performed more than 4 years after birth will not be accepted as proof of age or relationship unless it is consistent with material of record with the Department of Veterans Affairs, which will include at least one reference to age or relationship made at a time when such reference was not essential to establishing entitlement to the benefit claimed.

(c) Official report from the service department as to birth which occurred while the veteran was in service.

(d) Affidavit or a certified statement of the physician or midwife in attendance at birth.

(e) Copy of Bible or other family record certified to by a notary public or other officer with authority to ad-

minister oaths, who should state in what year the Bible or other book in which the record appears was printed, whether the record bears any erasures or other marks of alteration, and whether from the appearance of the writing he or she believes the entries to have been made at the time purported.

(f) Affidavits or certified statements of two or more persons, preferably disinterested, who will state their ages, showing the name, date, and place of birth of the person whose age or relationship is being established, and that to their own knowledge such person is the child of such parents (naming the parents) and stating the source of their knowledge.

(g) Other evidence which is adequate to establish the facts in issue, including census records, original baptismal records, hospital records, insurance policies, school, employment, immigration, or naturalization records.

(Authority: 38 U.S.C. 501)

CROSS REFERENCE: Evidence of dependents and age. See § 3.204.

[26 FR 1573, Feb. 24, 1961, as amended at 27 FR 1899, Feb. 28, 1962; 40 FR 53581, Nov. 19, 1975; 47 FR 28096, June 29, 1982; 52 FR 19349, May 22, 1987; 59 FR 46338, Sept. 8, 1994]

#### § 3.210 Child's relationship.

(a) *Legitimate child.* Where it is necessary to determine the legitimacy of a child, evidence will be required to establish the legality of the marriage of the mother of the child to the veteran or to show that the child is otherwise legitimate by State laws together with evidence of birth as outlined in § 3.209. Where the legitimacy of a child is not a factor, evidence to establish legitimacy will not be required: *Provided*, That, evidence is on file which meets the requirements of paragraph (b) of this section sufficient to warrant recognition of the relationship of the child without regard to legitimacy.

(b) *Illegitimate child.* As to the mother of an illegitimate child, proof of birth is all that is required. As to the father, the sufficiency of evidence will be determined in accordance with the facts in the individual case. Proof of such relationship will consist of: